

PENNZOIL CO.

IBLA 82-596

Decided June 17, 1982

Appeal from decisions of Montana State Office, Bureau of Land Management, rejecting oil and gas lease applications, M 51482 (ND) and M 51522 (ND Acq.).

Reversed.

1. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof
-- Evidence: Presumptions -- Evidence: Sufficiency -- Oil and Gas
Leases: Generally

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Pennzoil Company appeals the decisions of February 9, 1982, wherein the Montana State Office (MSO), Bureau of Land Management, rejected simultaneous oil and gas lease applications M 51482 (ND) and M 51522 (ND Acq.), which had received first priority for parcel MT 136 and parcel MT 176 respectively in the May 1981 drawing. The applications were rejected pursuant to 43 CFR 3112.6-1(b) because Pennzoil had not filed a complete list of corporate officers as required by 43 CFR 3102.2-5(a)(3) (45 FR 34162 (May 23, 1980)). The

decision stated that Pennzoil did not have a complete list of officers on file in the Eastern States Office (ESO) of the Bureau of Land Management, under the referenced serial number ES 066100.

Appellant states there is good reason to believe that a complete list of its corporate officers was filed in ESO prior to the May 1981 simultaneous filing period, even though ESO cannot find the list.

Appellant states it was advised by the Utah State Office (USO), Bureau of Land Management, by letter "3100 U-942" of January 14, 1981, while it was adjudicating some assignments of oil and gas lease title into Pennzoil that the corporate qualification statement of Pennzoil was not current and did not contain a complete list of corporate officers, and Pennzoil should submit the required information to ESO as required by 43 CFR 3102.2-5(a)(3). Thereafter, by letter of March 26, 1981, addressed to ESO and referencing USO's letter "3100 U-942" of January 14, 1981, Pennzoil, from its Houston office, sent BLM the complete list of its corporate officers. Copies of the letter were transmitted to USO and to Pennzoil's Denver office. The Denver office received its copy of the letter March 30, 1981. The copy received by USO, inexplicably, does not bear a date and time stamp showing when it was received. ESO asserts it has no record of receipt of the original letter with the list of corporate officers.

The copy of the letter in the USO file has a handwritten notation dated July 7, 1981: "[C]alled Eastern SO and they will send complete list of officers -- was not attached." The note was identified by an adjudicator in USO as her handwriting and meaning exactly what it says -- she called ESO and was advised that ESO would forward a copy of Pennzoil's list of officers to USO.

In addition to copies of the letters above discussed, appellant submitted an affidavit of the attorney who prepared the Pennzoil letter to ESO on March 26, 1981, and of the secretary who typed the letter, collated the attachment, and, after signature, inserted the papers in an envelope addressed to ESO and placed the envelope for pickup by the internal Pennzoil system for mailing.

Appellant acknowledges the legal presumption of regularity which attends the official acts of public officers, citing Diane M. Berndt, 62 IBLA 288 (1982). Appellant contends, however, that it has controverted the rebuttable presumption of administrative regularity with a variety of evidence tending to show that the list of its officers was filed with ESO before the May 1981 simultaneous filing period, and therefore that the rejection of its lease applications should be reversed. We agree.

Although a copy of the list of officers has not been located in ESO, the preponderance of the evidence supports a finding that it was indeed received. Appellant submitted an affidavit of Ms. Mara Heth, a paralegal employed by its counsel, describing her experience in attempting to locate the missing letter and list of officers in ESO. She recites statements of ESO employees relative to the very large backlog of unfiled documents concerning corporate qualifications which has accumulated over the past 6 to 8 months because of diversion of employees to other duties considered more pressing. She described the confusion expressed on the ostensible file for

Pennzoil, which has had, variously, labeling as "Pennzoil Company," "Pennzoil United Inc.," and "Pennzoil Producing Company." An employee of ESO advised her that the former system of placing all corporate qualification files under a single number, ES 066100, had been changed so that each corporation will have its own number hereafter, and that the Pennzoil letter and list could have been set aside to be assigned a new number and then misplaced.

Indeed, it is difficult to understand how USO could have been advised that a copy of the list of corporate officers of Pennzoil Company would be sent if ESO did not have such a list in hand.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Montana State Office are reversed as the evidence supports the contention of appellant that it had complied with the requirements of 43 CFR 3102.2-5(a)(3) prior to the May 1981 simultaneous filing period, and the cases are remanded to MSO for further appropriate action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

